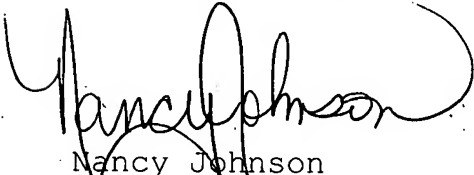


to the address will delay the delivery of the response to the undersigned.

Telephone inquiries regarding *this decision* should be directed to Senior Attorney Paul Shanowski at (571) 272-3225<sup>5</sup>. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions  
United States Patent and Trademark Office

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<sup>5</sup> Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.



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**AUG 24 2007**

**OFFICE OF PETITIONS**

In re Application of	:	
Nils Peter Nordqvist et al.	:	
Application No. 10/023,264	:	DECISION ON SECOND RENEWED
Filed: December 18, 2001	:	PETITION UNDER 37 C.F.R.
Attorney Docket No. 22645-7202	:	\$ 1.55(C)
Title: HEARING PROSTHESIS WITH	:	
AUTOMATIC CLASSIFICATION OF THE	:	
LISTENING ENVIRONMENT	:	

BACKGROUND

This is a decision on the second renewed petition under 37 C.F.R. § 1.55(c), filed September 27, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of priority to the filing date of foreign Danish Application No. PA 2000 00554, filed April 4, 2000.

ANALYSIS

The original petition was filed on August 19, 2005, and was dismissed via the mailing of a decision on January 13, 2006, for failure to include the required reference in either an oath or a declaration.

The renewed petition was filed on April 13, 2006, and was dismissed via the mailing of a decision on August 30, 2006, for listing the intermediate PCT application as a foreign reference.

With this second renewed petition, Petitioner has again attempted to introduce the benefit claim to foreign Danish Application via an amendment to the specification.

**This cannot be done.** Consequently, the second renewed petition is **DISMISSED**.

This application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Since the claim for priority is submitted after the period specified in 37 C.F.R. § 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 C.F.R. § 1.55(c).

A petition under 37 C.F.R. § 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, **and be included either in an oath or declaration (37 C.F.R. § 1.63(c)(2)) or in an Application Data Sheet (37 C.F.R. § 1.76(b)(6))**;
- (3) the surcharge as set forth in 37 C.F.R. 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The petition fails to comply with item (2) above. In this regard, a review of the file record fails to disclose that the priority information was included in an oath or declaration or in an Application Data Sheet (ADS) in accordance with 37 C.F.R.

§ 1.76(b)(6). Unless provided in an ADS, 37 C.F.R. § 1.63(c)(2) requires that the oath or declaration must identify the foreign application for patent (or inventor's certificate) for which priority is claimed under 37 C.F.R. § 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. Note MPEP § 201.14.

In view of the above, compliance with 37 C.F.R. § 1.63(c)(2) or 37 C.F.R. § 1.76(b)(6) must be satisfied if applicant desires to claim priority to the foreign application noted in the petition.

Any future petition should include a cover letter and be entitled "Third Renewed Petition under 37 C.F.R. § 1.55(c)."

Petitioner will further note that an ADS filed with the application is not required to be signed unless the ADS includes a nonpublication request. 37 C.F.R. § 1.33(b) requires that amendments and other papers, except for written assertions pursuant to 37 C.F.R. § 1.27(c)(2)(ii), filed in the application must be signed by an appropriate party. Therefore, an ADS or a supplemental ADS filed after the filing of an application must be signed in accordance with 37 C.F.R. § 1.33(b).

**On August 15, 2007, Senior Attorney Paul Shanowski contacted Petitioner, and was assured by the same that an executed supplementary ADS would be promptly submitted electronically. As of the mailing of this decision, it does not appear that this submission has been made.**

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail<sup>1</sup>, hand-delivery<sup>2</sup>, or facsimile<sup>3</sup>. Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web<sup>4</sup>.

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else

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1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

2 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

3 (571) 273-8300- please note this is a central facsimile number.

4 <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>